

01687.401200 (Rev 01-3)



PATENT APPLICATION

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

|                             |   |                      |
|-----------------------------|---|----------------------|
| In re Application of:       | ) |                      |
|                             | : | Examiner: Gina Yu    |
| NEIL D. SCANCARELLA ET AL.  | ) |                      |
|                             | : | Group Art Unit: 1617 |
| Application No.: 10/066,005 | ) |                      |
|                             | : |                      |
| Filed: January 31, 2002     | ) |                      |
|                             | : |                      |
| For: METHOD FOR IMPROVING   | ) |                      |
| THE PROPERTIES OF           | : |                      |
| TRANSFER RESISTANT LIP      | ) |                      |
| COMPOSITIONS AND RELATED :  | : |                      |
| COMPOSITIONS AND ARTICLES)  | : |                      |

Commissioner for Patents  
P.O. Box 1450  
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DECLARATION UNDER 37 C.F.R. 1.132

Sir:

I, Anjali Patil, a citizen of the United States, and a resident of Westfield, New Jersey, hereby declare that:

1. I am a co-inventor of the above-mentioned patent application.
2. I have a Ph.D. in polymer chemistry, obtained from the Indian Institute of Technology in Bombay, India, in 1982. I have been employed by Revlon since 1992, conducting research and development in cosmetic products containing novel polymers.

Prior to my experience at Revlon, I worked for certain companies and universities in the development of new polymers and the study of polymeric structures.

3. I am familiar with the prosecution of the above-referenced patent application, particularly the Official Action dated February 21, 2006, in which various claims were rejected on the ground that it would have been obvious to one of ordinary skill in the art to modify the overcoat composition of U.S. Patent No. 6,074,654 (Drechsler et al.) by adding polybutene as disclosed in U.S. Patent No. 4,935,228 (Finkenaaur et al.). To overcome the rejection, I performed the following experiment.

### Experiment

#### Overcoat

4. I prepared the lip gloss composition of Example 2 of Finkenaaur et al. (col. 5, lines 8-36), as follows:

| <u>Ingredient</u>                    | <u>% by weight</u> |
|--------------------------------------|--------------------|
| Light Mineral Oil <sup>1</sup>       | 42.83              |
| Polyethylene <sup>2</sup>            | 8.76               |
| Ethylene vinyl acetate <sup>3</sup>  | 2.92               |
| Polybutene <sup>4</sup>              | 42.84              |
| Timiron Super Gold                   | 2.63               |
| D&C Red # 6 barium lake <sup>5</sup> | 0.02               |

<sup>1</sup> Drakeol 19, having a viscosity of 110 centipoise at 10° C.

<sup>2</sup> Polyethylene from Honeywell (new owner of Allied Chemical Corporation, prior manufacturer of ingredient), trade name A-C 617.

<sup>3</sup> Ethylene vinyl acetate copolymer from Honeywell, trade name, A-C 400

<sup>4</sup> Indopol H-1500, Amoco Chemical Company

<sup>5</sup> dispersed in lanolin oil

5. I note that Example 2 of Finkenaaur et al. states that the light mineral oil had a viscosity of 110-125 cps., but does not specify the temperature at which the viscosity was

measured. I was unable to locate any light mineral oils having that viscosity at 25° C (room temperature, the typical temperature at which viscosities are measured).

Accordingly, I selected a "light" mineral oil that has a viscosity within the range disclosed in Finkenaar et al., except that the viscosity was measured at a temperature of 10° C. For the polyethylene, I used A-C 617 (Allied Chemical Corporation), which Finkenaar et al. states is a preferred polyethylene (*see* col. 4, lines 2-23). For the ethylene-vinyl acetate I used A-C 400 (Allied Chemical Corporation), which Finkenaar et al. states is a preferred ethylene-vinyl acetate (*see* col. 4, lines 2-23). Lastly, for the polybutene, I used Indopol H-155 (Amoco Chemical Company), which Finkenaar et al. states is the preferred polybutene (*see* col. 4, lines 30-31).

#### Basecoat

6. For the basecoat, I used the formula of Example 1 (col. 16, lines 15-47) of Drechsler et al. The formula of Example 1 is reproduced below:

| <u>Ingredient</u>                 | <u>w/w%</u> |
|-----------------------------------|-------------|
| <u>Group A:</u>                   |             |
| Silicone gum <sup>1</sup>         | 10.91       |
| Isododecane <sup>2</sup>          | 50.00       |
| <u>Group B:</u>                   |             |
| Organosiloxane resin <sup>3</sup> | 19.09       |
| Red #6 Calcium Lake               | 3.00        |
| Red #7 Barium Lake                | 3.00        |
| Titanium dioxide                  | 3.00        |
| Blue                              | 0.50        |
| Brown                             | 0.50        |
| Bentone gel <sup>4</sup>          | 10.00       |

<sup>1</sup> General Electric, SE 30. Silicone gum, 1,000,000 centistokes.

<sup>2</sup> Permethyl 99A from Permethyl Corporation.

<sup>3</sup> MQ Resin, 0.7:1.0 ratio M:Q available as SR1000 from General Electric.

<sup>4</sup> VS-5 PC, Rheox.

## Results

7. After preparing the basecoat and overcoat compositions, I applied the basecoat composition to the lips and allowed it to dry. Then, I applied the overcoat composition.

8. The overcoat composition, which corresponds to the composition of Example 2 of Finkenaar et al., was difficult to apply on the lips because it was a thick, stringy gum that could not easily be spread. The overcoat composition also had a very tacky surface.

When a tissue was touched to the lips, it adhered to the overcoat composition, and when pulled away from the lips, small tufts of tissue paper remained adhered to the surface of the lips. Additionally, when a tissue was rubbed across a lip, the gummy, sticky overcoat composition caused the tissue to pill on the lip.

9. These results show that an overcoat composition as disclosed in Finkenaar et al. does not provide a commercially acceptable result when applied on top of a basecoat disclosed in Drechsler et al. Specifically, Finkenaar et al. overcoat composition is not aesthetically pleasing, it does not flow smoothly over the basecoat, and it tends to drag and stick on the lip surface.

10. I further declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true, and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under section 1001 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of the application or any patent issuing thereon.

June 26, 2006  
Date

Anjali Abhimanyu Patil  
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